

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

TYRONE GARDNER, #209 180,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2:16-CV-821-MHT
)	[WO]
ALABAMA DEPARTMENT OF)	
CORRECTIONS, <i>et al.</i> ,)	
)	
Defendants.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

Plaintiff, an inmate incarcerated at the Ventress Correctional Facility in Clayton, Alabama, files this 42 U.S.C. § 1983 complaint alleging a denial of his right to equal protection. Named as defendants are the Alabama Department of Corrections, Officer John Marse, and Lieutenant Ensley. Plaintiff seeks injunctive relief. Upon review, the court finds the complaint is due to be dismissed under 28 U.S.C. § 1915(e)(2)(B).¹

I. DISCUSSION

A The Alabama Department of Corrections

Plaintiff names the Alabama Department of Corrections [“ADOC”] as a defendant. The ADOC is not subject to suit or liability under §1983. The Eleventh Amendment bars suit directly against a state or its agencies, regardless of the relief sought. *Papasan v. Allain*, 478 U.S. 265 (1986); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984). Thus, Plaintiff’s

¹ The court granted Plaintiff leave to proceed *in forma pauperis*. Doc. 4. A prisoner who is allowed to proceed *in forma pauperis* will have his complaint screened under the provisions of 28 U.S.C. § 1915(e)(2)(B) which requires this court to dismiss a prisoner’s civil action prior to service of process if it determines that the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(i)-(iii).

complaint against the ADOC is “based on an indisputably meritless legal theory,” and is, therefore, subject to dismissal as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i). *See Neitzke v. Williams*, 490 U.S. 319, 327 (1989).

B. Equal Protection

On August 9, 2016, Plaintiff and inmate Holmes received disciplinary infractions for possession of prison contraband, *i.e.*, cell phones. Plaintiff was found guilty and sanctioned to placement on lock up and a \$25.00 fee. Inmate Holmes, Plaintiff complains, although sanctioned to lock up, had no monetary fee imposed. Plaintiff complains many other inmates have also been subjected to disciplinary action for possessing contraband cell phones but have not been subjected to the additional sanction of a monetary fee. Doc. 1.

To establish a claim of discrimination cognizable under the Equal Protection Clause, “a prisoner must demonstrate that (1) he is similarly situated to other prisoners who received more favorable treatment; and (2) the state engaged in invidious discrimination against him based on race, religion, national origin, or some other constitutionally protected basis. *Jones v. Ray*, 279 F.3d 944, 946-47 (11th Cir. 2001); *Damiano v. Florida Parole and Prob. Comm’n*, 785 F.2d 929, 932-33 (11th Cir. 1986).” *Sweet v. Sec’y, Dep’t of Corr.*, 467 F.3d 1311, 1318-1319 (11th Cir. 2006). “[O]fficial action will not be held unconstitutional solely because it results in a . . . disproportionate impact. . . . [An allegation] of ... discriminatory intent or purpose [related to a constitutionally protected interest] is required to [set forth] a violation of the Equal Protection Clause.” *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264-265 (1977). “‘Discriminatory purpose’ . . . implies more than intent as volition or intent as awareness of consequences. It implies that the decision maker . . . selected . . . a particular course of action at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.”

Pers. Admin'r of Massachusetts v. Feeney, 442 U.S. 256, 279 (1979) (footnote and citation omitted); *see also Hernandez v. New York*, 500 U.S. 352, 359 (1991). Where Plaintiff challenges actions of a correctional official, exceptionally clear proof of discrimination is required. *Fuller v. Georgia Bd. of Pardons and Paroles*, 851 F.2d 1307, 1310 (11th Cir. 1988). Mere differential treatment of similarly situated inmates, without more, fails to allege a violation of the Equal Protection Clause. *E & T Realty Comp. v. Strickland*, 830 F.2d 1107 (11th Cir. 1987); *McKleskey v. Kemp*, 481 U.S. 279, 292 (1987) (claims of mere disparity of treatment are insufficient to establish discrimination).

Plaintiff fails to meet his pleading burden as he does not allege Defendants subjected him to adverse treatment based on some constitutionally impermissible reason; rather, he simply makes the conclusory assertion that differential treatment resulted in an equal protection violation. To the extent Plaintiff regards as actionable unequal treatment the fact that not all inmates are subject to the same disciplinary sanctions after being found guilty of violating prison regulations prohibiting possession of cell phones as the basis for his claim, as explained, the mere differential treatment of inmates fails to violate the Equal Protection Clause. *E & T Realty, supra*.

Based on the foregoing, the court concludes that Plaintiff's claim of discrimination does not rise to the level of an equal protection violation. It, therefore, provides no basis for relief in this 42 U.S.C. § 1983 action and is subject to dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii).

II. CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge this case be DISMISSED with prejudice prior to service of process under 28 U.S.C. § 1915(e)(2)(B)(i-ii).

It is further

ORDERED that **on or before March 14, 2017**, Plaintiff may file an objection. Any objection filed must specifically identify the factual findings and legal conclusions in the Magistrate Judge's Recommendation to which Plaintiff objects. Frivolous, conclusive or general objections will not be considered by the District Court.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar a party from a *de novo* determination by the District Court of factual findings and legal issues covered in the report and shall "waive the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions" except upon grounds of plain error if necessary in the interests of justice. 11th Cir. R. 3-1; *see Resolution Trust Co. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th Cir. 1993); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989).

Done, this 28th day of February 2017.

/s/ Wallace Capel, Jr.
UNITED STATES MAGISTRATE JUDGE